

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Whitty v. Nova Scotia (Human Rights Commission), 2007 NSSC 233

**Date:** 20070720

**Docket:** SH No. 276676

**Registry:** Halifax

**Between:**

Kevin J. Whitty

Applicant

v.

Nova Scotia Human Rights Commission

Respondent

**Judge:** The Honourable Chief Justice Joseph P. Kennedy

**Heard:** July 18, 2007, in Chambers, in Halifax, Nova Scotia

**Decision:** July 20, 2007 (Orally)

**Counsel:** Kevin J. Whitty - self-represented  
Jennifer Ross for the Respondent

**By the Court:**

[1] This matter was heard before this Court in Chambers session Wednesday, July 18, 2007. I set the matter over for oral decision to this afternoon. This is *Whitty v. Nova Scotia Human Rights Commission*. The applicant Kevin Joseph Whitty seeks a judicial review of a decision of the Nova Scotia Human Rights Commission. That decision being to discontinue his complaint against various respondents, Wiseman Investments, which is a corporation involved in apartment ownership is the landlord, its property manager and its building superintendent in relation to a specific apartment building which Mr. Whitty used to occupy. He is self-represented before this Court.

[2] I am treating the matter as an application by way of *certiorari*. There being a discretionary decision involved, I am satisfied that the action available to the Court would be restricted to quashing the decision of the Commission and sending the matter back to the Commission for review on the *certiorari*.

[3] The applicant, Mr. Whitty was evicted from an apartment unit in June of 2005. As a result he filed a complaint with the Human Rights Commission, (“the Commission”). He alleged that he was discriminated against with respect to his rental accommodation on the basis of his mental disability. Mr. Whitty claims that he and his family were exposed to various criminal and inappropriate activities while they were living at this apartment complex. He claimed that the stressful living environment, that the landlord and its employees allowed to exist, aggravated his schizophrenia and therefore provided unjust grounds for the landlord to terminate that tenancy.

[4] Mr. Whitty says in his complaint, that there were unpleasant incidents involving his neighbours, the property manager, and also the building superintendent. That those individuals did things that amounted to discrimination against Mr. Whitty.

[5] Following receipt of the formal written complaint the Commission solicited a response from those people who were named, the respondents, and in fact got responses from Mr. Blocklehurstt who was the superintendent and also from Ms. Metlege who was the property manager. Mr. Whitty was then given the opportunity to rebut the responses from those individuals and he produced rebuttals.

[6] Mr. Darryl MacPherson, a Human Rights officer, was eventually assigned by the Commission to investigate Mr. Whitty's complaint. By July 5, 2006 Mr. MacPherson had completed and prepared a report for the Commission. In accordance with the Commission's usual practice the investigation report was provided to the parties, provided to Mr. Whitty and the respondents, and all were given an opportunity to make submissions concerning the report.

[7] On July 20, 2006 Mr. Whitty filed his submissions in reply to the investigator's report. So, we have complaint, responses, a rebuttal to the responses, an investigative report, the distribution of the investigative report, and an opportunity to respond to the investigative report that Mr. Whitty takes advantage of, that he uses. He had that opportunity.

[8] October 3, 2006 the chairman of the Human Rights Commission writes to Mr. Whitty and to the respondents advising that the Commissioners, members of the Human Rights Committee, at their meeting of September 21, 2006, decided to discontinue Mr. Whitty's complaint on the basis that he had not established a prima facie case of discrimination. It is that September 21, 2006 decision, as communicated by that letter, that Mr. Whitty through this application seeks to overturn.

[9] According to that investigation report, that was prepared by Human Rights Officer, MacPherson, Mr. Whitty had been a tenant at that apartment building for twelve years before his conduct became problematic. Mr. MacPherson reports that Mr. Whitty was known by the landlord, specifically Ms. Metlege on behalf of the landlord, to suffer from schizophrenia before commencing that tenancy. So very early in the tenancy process, the landlord is aware that Mr. Whitty has schizophrenia.

[10] In the report the landlord and the other respondents gave their reasons for the decision to evict Mr. Whitty. Their reasons, the reasons that the landlord says justified that eviction, and this is through Ms. Metlege, the landlord says that they began to receive complaints from other tenants about Mr. Whitty's behaviour.

[11] She says further that in September 2004 the landlord attended a residential tenancy hearing seeking to have Mr. Whitty and his family evicted from the premises as a result of the complaints they were receiving, information they were

receiving. At that hearing, September 2004, the Residential Tenancy Board validated the eviction request, gave the landlord the go ahead to proceed with eviction.

[12] Mr. Whitty appealed that decision. The appeal was heard by the Small Claims Court in April 2005 and eventually the adjudicator upheld the Residential Tenancy Board, determined that the eviction could take place.

[13] The report indicated that before the Small Claims Court appearance took place, Mr. Whitty was charged with physical assault in relation to another tenant in the building. Subsequently he was convicted of that offence, but my understanding is that that conviction didn't take place until after the eviction process was complete.

[14] The Commissioner's investigator, the Human Rights officer Mr. MacPherson, concluded that Mr. Whitty was treated by the landlord and the respondents, who were part of the landlord's operation, as they would have treated any other tenant in those circumstances, that he was evicted for disruptive behaviour and that the act of eviction in those circumstances was not discriminatory.

[15] This investigator's report and the responses thereto were available to the Commissioners when they met in September 21, 2006, along with a lot of other information, but particularly the investigator's report and the responses. That is when they decided to discontinue the complaint process, in this case. This discontinuance was accomplished by the Commission's refusal to send the case on to an inquiry which would have been the next step were the process to have continued.

[16] Let me speak to inquiries. The Board of Inquiry Regulations, N.S. reg. 221-91 contains the following section which deals with the authority of the Commission, to advance a claim to a Board of Inquiry, it reads:

The Nova Scotia Human Rights Commission may, at any stage after the filing of a complaint, request the Chief Judge of the Provincial Court to nominate a person or persons for appointment by the Commission to a Human Rights Board of Inquiry to inquire into the complaint if the Commission is satisfied that, having

regard to all of the circumstances of the complaint, an inquiry thereinto is warranted.

[17] Two words are significant, “may” and “if”. No question that that legislation creates discretion. The discretion given the Commission in the regulation is broad, if the Commissioners are not satisfied that an inquiry is warranted they don’t move it on to an inquiry, the matter does not proceed to the Board and is discontinued. That’s what happened to Mr. Whitty’s complaint.

[18] Although the *Act* or regulations does not provide express authority to discontinue a complaint, such a power is understood by implication. If there is discretion to advance a claim, which clearly there is, there must be discretion to discontinue a claim.

[19] This simple truism was confirmed by Justice Margaret Stewart of this Court in *Baker v. Nova Scotia Human Rights Commission*, [1998] N.S.J. No.

[20] The decision to refer a matter to a Board of Inquiry however is discretionary. The question is this, was that decision in this case one with which this Court should interfere? Should this Court be interfering with the Commission’s decision to discontinue this matter?

[21] I am satisfied that the standard for review, for discretionary decisions made by administrative bodies, administrative tribunals, is patent unreasonableness.

[22] I cite two cases in support the Supreme Court of Canada decision in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 and the local decision in *Olkoro v. Nova Scotia Human Rights Commission* 2006 NSR 236. That is the standard that I apply here.

[23] That *Olkoro* case, by the way, is of similarity to this case. It’s a decision of Justice Goodfellow, experienced justice on this Court. No two cases are exactly alike, but *Olkoro* has similarities and it is an interesting case to examine when one considers the Commission’s situation in relation to these kinds of complaints.

[24] Mr. Whitty, the applicant, did not provide grounds for review in the Originating Notice or otherwise prior to the hearing, but I now conclude after listening to Mr. Whitty, and frankly he did a good job explaining his side of the

matter, I now conclude after hearing Mr. Whitty that his concerns, grounds for review, are primarily that the Commission was bias against him, further that the investigator Mr. MacPherson in his report, the report that was central to the Commission's decision, was not thorough in examining what Mr. Whitty believes he should have examined, all of the relevant things that should have been examined in order to come to a proper decision.

[25] He was concerned about those two things. He also raised some issues about procedural fairness.

[26] My understanding is that he was concerned, that he honestly believed that there was bias in the matter and that there was other information that the Commissioner should have examined before completing the report that might very well have caused the Commission to look at this matter differently. Those were his concerns as I understood them.

[27] Let me speak to the bias allegation. The allegation of bias was specific to another Human Rights Officer, Michael Lambert. Apparently Mr. Lambert was the investigating officer involved in the processing of another separate and previous complaint that Mr. Whitty had before the Commission. This previous complaint named the Halifax Regional School Board as the respondent. Mr. Whitty suggested that as a result of his involvement in that matter, and gave some specifics why, but generally as a result of Mr. Lambert's interaction with him and involvement and the way that he conducted that matter, that Mr. Lambert exercised bias against him in relation to this matter and that that bias would have translated to bias on the part of the Commission in the process of dealing with this matter. Mr. Lambert was not the principle investigator in this matter, although I believe he had some, at least peripheral involvement, in the matter.

[28] After having reviewed the material that I am required to review, in relation to this matter, I find no information that would support the allegation that Mr. Lambert was bias and communicated bias to the Commission. It just is not there in the material.

[29] As to the suggestion that more information should have been gathered; Mr. Whitty was specific about what some of that information should have been. That is a claim that would always be available. The proper question I think is this, was

the information that was before the Commission sufficient, complete enough to provide a reasonable basis for such a decision?

[30] I find that it was. It was extensive material if not exhaustive, and I am satisfied that the applicant, Mr. Whitty, was able to participate freely and fully, given a full opportunity to respond to the report, to respond to what the respondents were saying about the matter, to put forward his own position, his honestly held views in relation to the matter. In short, the process appears to have been a fair one.

[31] I am going to make a finding after viewing and considering all of the material filed and having heard the parties on this application, I find that this decision on the part of the Commission, this exercise of its statutory discretion, was a reasonable decision.

[32] It was not patently unreasonable, it was in fact reasonable. It was the decision of the Commission, and I think a sound one, that it was not mental illness, it was not schizophrenia that caused Mr. Whitty to be evicted. The reality is that he had lived in that complex for many years, in circumstances where he had that mental difficulty. It was the conclusion on the part of the landlord, the agents of the landlord, that he had begun behaving in a disruptive manner to the detriment of other tenants and when landlords come to that conclusion they have to take action. In short, the same reason why hundreds if not thousands of people are evicted in this country every year. That's why people get evicted, no matter what the reason for the disruptive behaviour, it is the disruptive behaviour that causes the process. There is no basis for this Court to interfere with this reasonable exercise of discretion on the part of this Commission and I so find. Thank you.

Chief Justice Kennedy